In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-554

ALPINE INVESTMENTS, INC.,
Petitioner,

VERSUS

VETA PEARL BARTON and SUN OIL COMPANY,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO THE ISSUANCE OF A WRIT

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The Respondents, Veta Pearl Barton and Sun Oil Company (Delaware), respectfully request that this Court deny the Petition for a Writ of Certiorari which seeks to overturn an opinion of the Supreme Court of the State of Oklahoma. A copy of the majority and concurring opinions are attached to the Petition for a Writ.

QUESTIONS PRESENTED

1. Is it impermissible for the State of Oklahoma to prescribe that a judgment which is not void on its face must be attacked within a limited time?

2. Is a purchaser of real property in Oklahoma entitled to rely upon a judgment which is valid on the face of the judgment roll and which is not subject to collateral attack?

STATEMENT OF THE CASE

Alpine (Petitioner) asserted that it owned an undivided three-fourths interest in the oil, gas and other minerals in the NE¼ of Section 22-13N-24W, Roger Mills County, Oklahoma. Title to the undivided three-fourths interest claimed by Alpine was quieted in Respondent Veta Pearl Barton (Barton) subject to an oil and gas lease from Barton to Jess Harris, Jr., dated January 26, 1968, recorded March 12, 1968, in Book 90 at page 279 of the records of the County Clerk of Roger Mills County, Oklahoma. Title to the oil and gas lease covering this three-quarters mineral interest was quieted in Sun Oil Company (Delaware) (Sun) and El Paso Natural Gas Company, who had acquired Sun's working interest by a pooling action before the Corporation Commission of the State of Oklahoma. Sun had retained only an overriding royalty interest.

Title to the remaining one-fourth interest in minerals was quieted in Pan Mutual Royalties, Inc., subject to an oil and gas lease owned by El Paso Natural Gas Company. No appeal was taken from the judgment of the district court as to this one-fourth interest.

On the 18th day of June, 1976, Barton filed an action in the District Court of Roger Mills County to quiet title against Alpine, Pan Mutual Royalties, Inc., Gas Anadarko Ltd. and El Paso Natural Gas Company. Sun intervened. Sun by mesne assignments had become the owner of the abovementioned oil and gas lease from Barton which purported to cover an undivided three-fourths interest in the minerals. By a pooling action before the Oklahoma Corporation Commission, El Paso acquired Sun's working interest

leaving Sun with the ownership of an overriding royalty interest.

The history of the title is as follows: By a judgment of the District Court of Roger Mills County dated June 23, 1947, Maud Taylor and Amy Taylor Sewell quieted their title to an undivided three-fourths interest in the minerals against Union Royalty Company. The court found that there was fraud in the execution of the deed and the deed was reformed from a perpetual mineral interest to a twenty-year term mineral interest. By a quit-claim deed dated October 7, 1947, Maud Taylor and Amy Sewell, joined by her husband, quit claimed all right, title and interest in the land to Fred Barton. Respondent Veta Pearl Barton's interest stems through Fred Barton.

Alpine obtained its purported interest by mineral deed from Union Royalty Company dated July 10, 1973, recorded October 23, 1973, in Book 156 at page 184. The deed purported to convey an undivided 120/160ths interest in the minerals in the NE¼ of Section 22. The trial court found that the 1946 deed reformation and quiet title suit was valid upon the face of the judgment roll and was not subject to collateral attack. Title was quieted in Barton and her grantees as to the three-fourths mineral interest. The Supreme Court of Oklahoma affirmed, holding that the judgment was valid on the face of the judgment roll and that it was not subject to collateral attack.

REASONS FOR DENYING THE WRIT

1. Alpine alleged in its Petition in the District Court of Roger Mills County, Oklahoma, that the 1947 judgment which quieted title against Union, "was invalid and obtained without due process." The Petition in Error stated:

> "(5) That the trial court erred in entering judgment on the theory of the finality of judgments and against the theory of due process."

No mention was made of the Constitution of the United States of America or of the Fourteenth Amendment thereto in either the petition in the trial court or the Petition in Error in the Supreme Court of Oklahoma. No contention was made that there is any constitutional defect in the law of Oklahoma under which a judgment valid on its face becomes immune from collateral attack unless a statutory proceeding to vacate the judgment is commenced within the required statutory period.

No federal question was raised and necessarily decided in the state court proceeding.

There is no showing that a due process point under the Federal Constitution was properly raised. A general allegation that a constitutional point is involved is insufficient. *Herndon* v. *Georgia,* 295 U.S. 441, 442-443; *Harding* v. *Illinois,* 196 U.S. 78, 88; *Capital City Dairy Co.* v. *Ohio,* 183 U.S. 238, 248; *Oxley Stave Co.* v. *Butler County,* 166 U.S. 648; *Bowe* v. *Scott,* 233 U.S. 658, 664-665. The dissenting opinion of Mr. Chief Justice Hughes in *Minnesota* v. *National Tea Co.,* 309 U.S. 551, 558-559, and the cases cited in the annotation of the same case found in 84 L.Ed. 925-947.

Indeed, in the concurring opinion of Justice Opala this statement is made (Appendix to the Petition for Writ, ix):

> "Since Alpine does not assert that our time limitations on attacking and vacating judgments void in fact but not void facially violate due process — state or federal — that issue need not be reached here."

Article 2, Section 7 of the Constitution of the State of Oklahoma provides:

> "No person shall be deprived of life, liberty, or property without due process of law."

Presumably, the reference in the Petition and the Petition in Error was to the Oklahoma Constitution. *Bowe* v. *Scott,* 233 U.S. 658, 664-665; *Brady* v. *Maryland,* 373 U.S. 83, 91.

Mr. Justice Harlan, in the dissenting opinion to *Amalgamated Food Employees Union* v. *Logan Valley Plaza,* 391 U.S. 308, 334, said:

> "The rule that in cases coming from state court this court may review only those issues which were presented to the state court is not discretionary but jurisdictional."

Review is limited to federal questions that were properly raised in the state court: *Whitney* v. *California,* 274 U.S. 357, 362-363; *Dewey* v. *Des Moines,* 173 U.S. 193, 197-198; *Wilson* v. *Cook,* 327 U.S. 474, 483-484.

The judgment of the trial court and the affirmance of that judgment by the Supreme Court of Oklahoma was based on the fact that the judgment was valid on the face of the judgment roll and was not subject to attack.

This Court will not review a state court judgment under the circumstances of this case. *Murdock* v. *Memphis*, 20 Wall. 590, 636; *Berea College* v. *Kentucky*, 211 U.S. 45, 53; *Herb* v. *Pitcairn*, 324 U.S. 117, 125-126.

The majority opinion of the Supreme Court of Oklahoma holds that the 1947 judgment which reformed the deed to a twenty-year flat term mineral interest, and then quieted title against such mineral interest, was not void on its face and that an attack on the judgment was barred by the three-year statute. The concurring opinion of Justice Opala reached the same result but explained the result by pointing out that the 1926 mineral deed which showed the address of the grantee was not part of the judgment roll since it had not been attached as an exhibit to the petition. Both the majority opinion and the concurring opinion of Justice Opala found that the judgment was not subject to attack as the judgment was over three years old.

No question was raised as to the constitutionality of the three-year statute under the federal constitution or under the Constitution of the State of Oklahoma. Therefore, the opinion of this Court in *Paschall* v. *Christie-Stewart, Inc.*, 414 U.S. 100 (1973), is clearly applicable. That case holds that a judgment of a state court cannot be reviewed by this Court where the judgment rests on an unchallenged non-federal ground.

2. Both the trial court and the Supreme Court of Oklahoma have held that the 1947 judgment which quieted title against Union is a valid judgment, not subject to collateral attack.

Mullane v. *Central Hanover Bank & Trust Company*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), which is cited at page five of the petition is neither pertinent nor controlling as *Mullane* involved no question as to the power of a state to determine rules regulating the finality of judgments rendered by its courts of general jurisdiction.

In *Bomford* v. *Socony Mobil Oil Co.*, 440 P.2d 713 (Okl. 1968), the court, in the first syllabus thereof, said:

> "Where the affidavit for publication service upon defendants in quiet title action showed action to be of a class of cases in which statute permits publication service, and that plaintiff with due diligence is unable to secure service upon defendants within the state otherwise than by publication, and the journal entry discloses trial court's examination of files and finding that publication service was proper, the judgment rendered against defendants in such case was not void on its face."

In *Bomford*, the Oklahoma court enunciated new requirements designed to force lawyers to more fully investigate facts and present those facts to the court at the time of seeking a default judgment. However, in Syllabus Five, the court holds:

> ". . . This procedural modification of existing decisional law shall not affect the validity of judgments rendered before this opinion becomes final."

Under the pre-*Bomford* rule, the 1947 judgment was a valid judgment on the face of the judgment roll. In *Bomford*, the court carefully noted that titles should not be upset by imposing new rules and requirements retroactively.

The immunity of judgments from collateral attack is a rule well established in Oklahoma law. The court has time and time again recognized the importance of the finality of judgments. The court has time and time again recognized the fact that a final judgment cannot be collaterally attacked. The court has time and time again recognized the importance of the principle that lawyers must be able to rely upon proceedings which are regular on their face. The court has recognized the fact that the stability of titles is of prime importance and that laws and rules must be enunciated which serve to preserve the stability of titles, not destroy them.

In *Jupe* v. *Home Owners Loan Corporation,* 167 P.2d 46 (Okl. 1946), the court at page 47 said:

> ". . . The sole basis for the alleged error is, that evidence aliunde the record reflects the fact that defendant was a resident of Oklahoma and with proper diligence could have been personally served, which facts plaintiff knew or should have known."

At page 48, the court said:

> "[1] In Edwards v. Smith, 42 Okla. 544, 142 P. 302, we said:
>
> > 'A judgment is not void in the legal sense for want of jurisdiction, unless its invalidity and want of jurisdiction appears on the record; it is voidable merely.'
>
> "[2] The basis of such holding which is applicable here is expressed in Lausten v. Union National Bank of Bartlesville, 70 Okl. 173, 173 P. 823, 826, as follows:
>
> > 'The jurisdiction of the court does not depend upon nonresidence, but upon the evidence thereof

> furnished by the affidavit. The questions of whether the facts stated in the affidavit are true or not is immaterial until challenged in some recognized legal proceeding for the vacation of valid judgments.' "

The second syllabus by the court in *Scoufos* v. *Fuller,* 280 P.2d 720 (Okl. 1955) is as follows:

> "A void judgment is one that is void on the face of the record or judgment roll, and a judgment is not void on the face of the record if extrinsic evidence is necessary to establish the invalidity."

In *Kolp* v. *State,* 312 P.2d 483, 485 (Okl. 1957), the court said:

> ". . . This Court has decided many times that a judgment regular on the face of the judgment roll, requiring extrinsic evidence to disclose its invalidity, is only voidable, and can only be vacated in the manner and within the time provided by Section 1038, 12 O.S. 1951. That statute provides in its last sentence that: '* * * A void judgment may be vacated at any time, on motion of a party, or any person affected thereby.' "

In *Crowther* v. *Schoonover,* 266 P. 777 (Okl. 1928), the court held that if it was necessary to resort to evidence extrinsic to the judgment roll, the motion to vacate the judgment must be presented within three years of the judgment as prescribed by Oklahoma statutes.

A purchaser is not bound to go beyond the judgment roll. *Eudaly* v. *Superior Oil Co.,* 270 P.2d 335 (1954).

Every fact not negatived by the judgment roll must be presumed to support a judgment of a court of general

jurisdiction. *Bomford* v. *Socony Mobil Oil Co.*, 440 P.2d 713 (Okl. 1968).

A judgment is void on its face only where there is an *affirmative showing on the face of the judgment roll* that the court lacked jurisdiction. *State ex rel. Commissioners of Land Office* v. *Keller*, 264 P.2d 742 (Okl. 1954).

Service by publication is not subject to collateral attack. *Core* v. *Smith*, 23 Okl. 909, 102 P. 144 (1909).

There is a presumption in favor of the validity of a judgment. *Pettis* v. *Johnston*, 78 Okl. 277, 190 P. 681 (1920).

There is a presumption that proper service was had. *Myers* v. *Carr*, 173 Okl. 335, 47 P.2d 156 (1935).

A judgment which recites that the defendant was served is conclusive on collateral attack. *Johnson* v. *Johnston*, 82 Okl. 259, 200 P. 204 (1921).

Where the judgment recites that the court has examined the publication service, there is an adjudication of compliance, and the judgment is valid and not subject to collateral attack. *Smith* v. *Head*, 192 Okl. 216, 134 P.2d 973 (1943).

Mullane, supra, holds that standards of notice must be adopted which are most likely to cause actual notice to the parties whose rights are involved in a judicial or other statutory proceeding. *Mullane* does not hold that the Supreme Court of the United States is going to attempt to police every proceeding.

Title 12, Oklahoma Statutes 1978 Supp., Section 170-6, and its predecessor section (Title 12, Section 170, Oklahoma

Statutes 1971) authorize service by publication where personal service cannot be obtained. No attack is made here or in the state court on the constitutional validity of the Oklahoma statute.

In *Mullane,* 94 L.Ed. 865, 873, this Court said:

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. [Citing cases] . . . But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirements are satisfied."

In *Sabin* v. *Levorsen,* 193 Okl. 320, 145 P.2d 402, 405 (1943), the Oklahoma court said:

> "Generally, the judgment roll may be said to consist of the petition, including the *exhibits thereto attached,* process, pleadings filed subsequent to the institution of the suit, reports, verdict, orders and judgments, and all material acts and proceedings of the court. (emphasis ours)
>
> * * * *
>
> "A judgment will not be held void on its face unless it affirmatively appears from an inspection of the judgment roll that any of the three following jurisdictional elements are absent: (1) jurisdiction of the person; (2) jurisdiction of the subject matter; (3) judicial power to render the particular judgment."

CONCLUSION

Because no federal constitutional point was raised in either the trial court or in the Supreme Court of Oklahoma and because the case was decided by the Supreme Court of Oklahoma on a point that is entirely independent of any constitutional claim of the violation of due process rights, we submit that the Writ should be denied.

Respectfully submitted,

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